

**REGULATORY IMPACT REVIEW AND
INITIAL REGULATORY FLEXIBILITY ANALYSIS
FOR THE 2004 CHANGES TO THE
AREA 2A PACIFIC HALIBUT CATCH SHARING PLAN**

National Marine Fisheries Service, Northwest Region
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In order to comply with Executive Order (EO) 12866 and the Regulatory Flexibility Act (RFA), this document serves as a Regulatory Impact Review (RIR) and an Initial Regulatory Flexibility Analysis (IRFA) for the Pacific Fishery Management Council's recommended 2004 changes to the Area 2A Pacific halibut Catch Sharing Plan and annual domestic Area 2A halibut management measures.

REGULATORY IMPACT REVIEW

Executive Order (EO) 12866, Regulatory Planning and Review, was signed on September 30, 1993, and established guidelines for promulgating new regulations and reviewing existing regulations. The EO covers a variety of regulatory policy considerations and establishes procedural requirements for analysis of the benefits and costs of regulatory actions. The EO stresses that in deciding whether and how to regulate, agencies should assess all of the costs and benefits across all regulatory alternatives. Based on this analysis, they should choose those approaches that maximize net benefits to society.

NMFS requires the preparation of an RIR for all regulatory actions of public interest, including any changes to Pacific halibut management in Area 2A. The RIR provides a comprehensive review of the changes in net economic benefits to society associated with proposed regulatory actions. The analysis also provides a review of the problems and policy objectives prompting the regulatory proposals and an evaluation of the major alternatives that could be used to solve the problems. The purpose of the analysis is to ensure that the regulatory agency systematically and comprehensively considers all available alternatives, so that public welfare can be enhanced in the most efficient and cost-effective way. The RIR addresses many of the items in the regulatory philosophy and principles of EO 12866.

The RIR is designed to determine whether the proposed action could be considered a "significant regulatory action" according to EO 12866. EO 12866 tests requirements used to assess whether or not an action would be a "significant regulatory action", and identifies the expected outcomes of the proposed management alternatives. An action may be considered "significant" if it is expected to: 1) Have a annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; 2) Create a serious inconsistency or otherwise interfere with action taken or planned by another agency; 3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or 4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the EO.

The RIR analysis includes a: description of management objectives, description of the fishery, statement of the problem, description of each alternative considered in the analysis, and an economic analysis of the expected effects of each selected alternative relative to the *no action* alternative.

Description of the Management Objectives & Legal Authority

The Northern Pacific Halibut Act of 1982 at 16 U.S.C. 773c provides that the Secretary of Commerce (Secretary) shall have general responsibility to carry out the Halibut Convention between the United States and Canada and that the Secretary shall adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. Section 773c(c) also authorizes the regional fishery management council having authority for the geographic area concerned to develop regulations governing the Pacific halibut catch in United States (U.S.) Convention waters that are in addition to, but not in conflict with, regulations of the International Pacific Halibut Commission (IPHC). Accordingly, catch sharing plans to allocate the total allowable catch (TAC) of Pacific halibut between treaty Indian and non-Indian harvesters, and among non-Indian commercial and sport fisheries in IPHC statistical Area 2A (off Washington, Oregon, and California) have been developed each year since 1988 by the Council in accordance with the Halibut Act. In 1995, the National Marine Fisheries Service (NMFS) implemented a Council-recommended long-term Catch Sharing Plan (Plan) [60 FR 14651, March 20, 1995]. In each of the intervening years between 1995 and the present, minor revisions to the Plan have been made to adjust for the changing needs of the fisheries. Thus, the main management objective for the Pacific halibut fishery in Area 2A is to manage fisheries to remain within the TAC for Area 2A, while also allowing each commercial, recreational and tribal fishery to target halibut in the manner most appropriate for the user's needs within that fishery.

Description of the Fishery

Pacific halibut (*Hippoglossus stenolepis*) range from the Hokkaido, Japan to the Gulf of Anadyr, Russia on the Asiatic Coast and from Nome, Alaska to Santa Barbara, California on the North American (Pacific) Coast. The Pacific halibut fishery is managed by the IPHC with implementing regulations set by the federal governments of Canada and the U.S. in their respective waters. The IPHC, responsible for the health of the Pacific halibut resource, conducts extensive stock assessments to ensure that the health and size of the population is correctly estimated. The IPHC then decides on total removals of Pacific halibut in all management areas off the U.S. and Canada at their annual meeting. All allocative responsibility and consequent management measures are the responsibility of the individual Federal governments. For the U.S. in Area 2A, NMFS Northwest Region is responsible for allocation and management with close coordination with Washington and Oregon's state agencies (Washington Department of Fish and Wildlife (WDFW) and Oregon Department of Fish and Wildlife (ODFW)).

A license from the IPHC is required to participate in the non-treaty commercial Pacific halibut fishery. The commercial sector off the Pacific Coast, IPHC Area 2A, has both a treaty and non-treaty sector. For the non-treaty commercial sector, harvest is divided between the directed halibut fishery and the incidental catch of halibut in the salmon troll fishery. In years when the Area 2A TAC is above 900,000 lbs, as it has been in recent years, halibut may be retained in the limited entry primary sablefish fishery north of Point Chehalis, Washington (46°53'18" N. lat.).

The non-treaty directed commercial fishery in Area 2A is confined to south of Point Chehalis, Washington, Oregon, and California. Area 2A licenses, issued for the directed commercial fishery, have decreased from 428 in 1997 to 260 in 2003. For 2001 through 2003, the directed commercial licenses also allow longline vessels to retain halibut caught incidentally north of Point Chehalis during the primary sablefish season because the TAC in Area 2A was above 900,000 lbs. Area 2A licenses issued for the incidental salmon troll fishery increased from 275 in 1997 to 323 in 2003. In Area 2A, 2003 federal regulations permitted the incidental salmon troll fishery to retain 1 halibut (minimum 32") per 3 chinook, plus 1 extra halibut, with a maximum of 35 incidental halibut landed.

The Pacific halibut fisheries in Area 2A are allocated a small percentage, less than 2%, of the overall TAC. The Plan details allocations within the Area 2A TAC. The Plan allocates 35 percent of the Area 2A TAC to Washington treaty Indian tribes in Subarea 2A-1 and 65 percent to non-Indian fisheries in Area 2A. The allocation to non-treaty fisheries is divided into three shares, with the Washington sport fishery (north of the Columbia River) receiving 36.6 percent, the Oregon/California sport fishery receiving 31.7 percent, and the commercial fishery receiving 31.7 percent. The commercial fishery is further divided into two sectors: a directed (traditional longline) commercial fishery that is allocated 85 percent of the 31.7 percent (26.95 percent of the non-treaty harvest), and an incidental (troll salmon) commercial fishery that is allocated 15 percent of the 31.7 percent (4.75 percent of the non-treaty harvest). The directed commercial fishery in Area 2A is confined to southern Washington (south of 46°53'18" N. lat.), Oregon, and California. As previously mentioned, when the Area 2A TAC is above 900,000 lb, longline vessels participating in the primary sablefish season are permitted to retain some amounts of halibut taken incidentally in that fishery. The Plan also divides the sport fisheries into seven geographic areas, each with separate allocations, seasons, and bag limits.

Effective in 1995, three types of IPHC licenses were issued for Area 2A fisheries: a directed commercial license, a license to land halibut caught incidentally in the salmon troll fishery, and a charter license. No vessel may participate in more than one of these three fisheries per year. Directed commercial licenses also allow longline vessels to retain halibut caught incidentally north of Point Chehalis during the primary sablefish season.

Commercial fishers must obtain an IPHC license to harvest halibut commercially in Area 2A. Since 1994, commercial fishers have had to choose between a license for the directed fishery or a license for retaining halibut incidentally in the salmon troll fishery. Fishers licensed to fish for halibut in the commercial halibut fishery could not obtain an IPHC charterboat (sport) license nor operate the vessel in the sport fisheries in Area 2A. Conversely, fishers participating in the Area 2A sport fisheries could not participate in either of the commercial fisheries for halibut. In the sport fishery, only charterboat owners/operators must obtain an IPHC license; IPHC licenses are not required for individual anglers nor private boats.

For a more detailed description of the fishery, please refer to Sections 3.2 (Biological Environment) and 3.3 (Human Environment) of the Environmental Assessment and Regulatory Impact Review for Changes to the Catch Sharing Plan for Pacific Halibut in Area 2A (NMFS, January 2003). An updated version of Section 3.3, Human Environment, with updated 2004 halibut catch statistics is attached to this RIR/IRFA.

Statement of the Problem

Each year, the states of Washington and Oregon and the halibut treaty tribes meet with their fishery participants to review halibut management under the Plan. Based on feedback from these meetings and experience from the previous year's fishing season, the states or the tribes may propose changes to the Plan. Proposed changes to the plan are intended to remedy any problems encountered during the previous year's management, problems with other fisheries with overlapping management jurisdiction (i.e., Pacific Coast groundfish), or other anticipated problems.

If either the states or the tribes wish to propose changes to the Plan or annual domestic Area 2A management measures, their representatives bring those proposed changes to the Council at its September meeting and the Council makes final recommendations to NMFS on revisions to the Plan and domestic management measures at its November meeting. This year, both Washington and Oregon brought constituent proposals forward to the Council. In addition to these state-generated recommendations for

changes to the Plan, the Council continues to support restrictions to the halibut fisheries under its groundfish specifications and management measures process. Overfished groundfish species, particularly yelloweye rockfish, are known to be taken in both recreational and commercial hook-and-line fisheries for halibut. The Council continues to support its recommendations from 2003 to restrict the halibut fisheries by area in order to protect yelloweye rockfish, as part of an overall package of rebuilding measures for that species.

For 2004, the Council has recommended a change to annual domestic Area 2A halibut management measures that would revise the eastern, inshore boundary of an area closed to non-treaty commercial halibut fishing.

For 2004, the Council has recommended a series of minor changes¹ to the Plan, as initially proposed by the states of Washington and Oregon, including:

- Language in the Plan's section on Sport Fisheries (Section (f)), related to the sport fisheries off the coast of Washington is amended to: revise the process by which the public is notified of inseason shifts of halibut quota between Washington sport subareas; revise the process by which the public is notified of Puget Sound subarea fishing dates, and; make minor revisions to season start dates in the Washington North Coast and South Coast subareas. These proposals are intended to improve inseason management flexibility for managers and anglers, and are intended to provide holiday fishing opportunities for North Coast anglers.
- Language in the Plan's section on Sport Fisheries (Section (f)), related to the sport fisheries off the coast of Oregon is amended to: combine the North Central and South Central Coast subareas, which are already managed in concert; revise the process by which "additional fishing days" are set for the Spring and Summer fisheries once the initial fixed fishing days have occurred in the Spring fishery and if the quota has not been achieved; extend the season duration south of Humbug Mountain to October 31; clarify Federal halibut season regulations so that they provide better protection for overfished groundfish species by stating that halibut possession is prohibited in waters closed to halibut fishing for the protection of groundfish, make halibut nearshore fishing area regulations consistent with Council recommendations for groundfish nearshore fishing area regulations. These proposals are intended to provide anglers with an improved opportunity to access their available quota and to provide consistency between Federal groundfish and halibut regulations.

Description of each alternative considered in the analysis

Area closed to non-treaty commercial halibut fishing. In Section (27) of the annual domestic Area 2A halibut management measures, non-treaty commercial vessels operating in the directed commercial fishery for halibut in Area 2A are required to fish outside of a closed area, known as the Rockfish Conservation Area (RCA), that extends along the coast from the U.S./Canada border south to 40°10' N. lat. The RCA is a closed area intended to protect certain overfished rockfish species and is primarily designated in the federal Pacific Coast groundfish fishery specifications and management measures. In 2003, the closed areas, defined by straight lines connecting specific latitude and longitude coordinates to approximate depth contours, were as follows: (1) between the U.S./Canada border and 46°16' N. lat., the

¹These non-substantive changes, listed above, were categorically excluded from a National Environmental Policy Act (NEPA) analysis as provided for in NMFS' environmental review procedures at NAO 216-6 Section 6.03(d)(4)(b).

eastern boundary of the RCA extended to the shoreline, (2) between 46°16' N. lat. and 40°10' N. lat., the RCA was defined along an eastern, inshore boundary approximating 27 fm, and (3) between the U.S./Canada border and 40°10' N. lat., the RCA was defined along a western, offshore boundary approximating 100 fm. For 2004, the Council has recommended moving what was the 27 fm RCA boundary for groundfish and halibut to a 30 fm boundary. Thus for 2004, the same RCA boundaries mentioned above would be in place except that between 46°16' N. lat. and 40°10' N. lat., the RCA would be defined along an eastern, inshore boundary approximating 30 fm instead of 27 fm.

Flexible inseason management provisions for Washington State sport fisheries. At Section (f)(5)(i)(C), the Plan currently allows NMFS to take inseason action to “transfer any projected unused quota [from a Washington sport subarea] to a Washington sport subarea.” For 2004 and beyond, the Council has recommended making this language more specific and inserting it within each of the subarea fishery descriptions to which it applies: paragraphs (f)(1)(ii) through (f)(1)(iv) of the Plan. These paragraphs apply to the Washington North Coast, Washington South Coast, and Columbia River subareas. The Plan currently requires that each of these fisheries close when the quota for the particular subarea is estimated to be taken. The “unused” quota referred to in (f)(5)(i)(C) would be any quota for a subarea that would not be sufficient for a single day of fishing in that subarea, but which could be taken in another subarea with a slower pace of fishing.

Public Announcement Process for the Puget Sound Subarea. At Section (f)(1)(i) of the Plan, Washington Department of Fish and Wildlife (WDFW) is required to hold annual public workshops on scheduling the Puget Sound sport fishing season dates. For 2004 and beyond, WDFW requested that the Council recommend removing this requirement from the Plan. WDFW holds annual workshops on all of its halibut sport fisheries and has developed mail and e-mail lists for their Puget Sound anglers. WDFW plans to seek public comment on Puget Sound halibut fishery management concurrently with its efforts to seek public comment on all of its halibut subarea fisheries. As in the past, this public comment period would occur after the late-January meeting of the IPHC, but before the early March opening of the halibut fisheries.

Washington North Coast and South Coast Subarea Season Dates. Under Section (f)(1)(ii) of the Plan, the Washington North Coast subarea fishery is scheduled to begin May 1, with 72% of the subarea’s quota allocated to the May fisheries. Harvest rates in this subarea have increased in recent years, such that the May fishery allocation is often taken before Memorial Day weekend, a desirable fishing weekend. For 2004 and beyond, the Council has recommended revising the Plan such that the fishery would begin each year on the first Tuesday in the period May 9 through May 15. Under Section (f)(1)(iii) of the Plan, Washington’s South Coast subarea fishery is open in all waters 5 days per week and in nearshore waters 7 days per week. In recent years, NMFS has opened this fishery inseason to a 7 day per week fishery, to allow vessels participating in this slow-paced subarea to retain any halibut they may take incidentally while sport fishing for groundfish or salmon. For 2004 and beyond, WDFW requested and PFMC has recommended allowing this fishery to automatically switch from a 5 day per week fishery to a 7 day per week fishery on July 1st. Recreational salmon fishing off Washington generally begins in early July and this switch-date is intended to recognize greater salmon-directed effort during the summer months.

Combining the Oregon North Central and South Central Coast Subareas. The Oregon North Central and South Central Coast subareas are managed under sections (f)(1)(v) and (vi) of the Plan. Together, these two subareas are allocated 95% of the Oregon-California sport fisheries allocation. Over time, management measures for these subareas have become less distinct from each other, such that they are now managed in concert with each other. The nearshore fisheries in these subareas and the allocation for those nearshore fisheries is combined for the two subareas, as are the August all-depth fisheries and

allocation. Although the allocations for the May all-depth North Coast and South Coast subareas are separate, the fisheries are held concurrently so that fishing effort is distributed along the length of the Oregon Coast. For 2004 and beyond, the Oregon Department of Fish and Wildlife (ODFW) has requested and the Council has recommended combining the two subareas within the Plan so that the Plan better reflects the reality of Oregon halibut sport fishery management priorities.

Oregon Spring and Summer “Additional Fishing Days”. Under sections (f)(1)(v) and (vi), the North Central and South Central Coast subareas (to be combined in 2004 and beyond) are managed with a Spring season for the May-June period and a Summer season for the August-October period. After combining these two subareas, the Oregon Central Coast subarea would have three sub-allocations: 8% of the subarea’s allocation to the nearshore fisheries, 69% of the subarea’s allocation to the Spring all-depth fisheries, and 23% of the subarea’s allocation to the Summer all-depth fisheries. Currently, the Plan calls for both the Spring and Summer fishery to start with “fixed days,” which are fishing days set pre-season, on which the fishery is expected to be open. The number of fixed fishing days is set conservatively, to ensure that the quota is not exceeded, and is based on the amount of halibut available and the historical levels of fishing effort in these fisheries. Because the number of fixed fishing days must be set conservatively to ensure that the fisheries stay within quota, there is usually quota remaining after the last fixed fishing day in both the Spring and Summer seasons. Before the start of the halibut fisheries each year, NMFS works with ODFW and IPHC to set additional potential fishing days for both the Spring and Summer fisheries. For the past two years, both the Spring and Summer fisheries have not taken their quotas on the fixed dates, and the number of additional potential fishing days set preseason has not been great enough to allow the fisheries to attain their quotas. In both years, ODFW worked with NMFS and IPHC to increase the number of additional potential fishing days inseason, but still, much of the quota went unharvested (14% under quota in 2002 and 28% under quota in 2003). Based on these experiences, ODFW has requested and the Council has recommended for 2004 and beyond that the Plan allow the Spring fishery to continue to be structured with conservatively-set fixed fishing days, but allow the additional potential days to be set pre-season such that the fishery is held every other week (Friday and Saturday,) barring adverse tidal conditions, until the quota for the Spring season is estimated to have been achieved. The Summer fishery would continue to open on the first Friday in August, and would then re-open every other week (Friday and Saturday,) barring adverse tidal conditions. The intent of these revisions would be to ensure before the season starts that ample time is available for participants in these seasons to take their sub-quotas.

Extension of the South of Humbug Mountain Subarea Season End Date. Under the Plan at (f)(1)(vii), the subarea south of Humbug Mountain is allocated 3% of the Oregon-California sport fishery allocation, or 0.62% of the Area 2A TAC. The season in this subarea is held from May 1 through September 30. For 2004 and beyond, the Council has recommended extending the season end date to October 31, so that the subarea’s season end date is consistent with the season end date for the other Oregon subareas.

Consistency with Federal Rockfish Conservation Area Regulations. As described above, the Oregon Central Coast sport fishery is divided into a nearshore fishery and two all-depth seasons, Spring and Summer. The nearshore fishery is essentially an incidental fishery, a small sub-quota (8% of the combined Central Coast subarea quota) is available to those anglers who may take halibut incidentally in the nearshore area, when directing their efforts on other sport species. Historically, this nearshore fishery has rarely attained its sub-quota; participants took 6% of the nearshore allocation in 2003. Under the Plan, fishing on this sub-quota occurs inshore of the 30 fm depth contour. For 2004, the Council recommended restricting the nearshore recreational groundfish fisheries in June through September to inshore of the 40 fm depth contour to protect overfished species found offshore of 40 fm. To make nearshore recreational regulations consistent between the groundfish and halibut fisheries, the Council has

also recommended revising the nearshore halibut fishing area to inshore of the 40 fm depth contour. If Pacific Coast groundfish regulations change this closed area during the year to protect overfished groundfish species, nearshore recreational halibut regulations for this subarea would also change to mirror the groundfish closure. This revision would apply to the nearshore halibut fisheries from their opening date of May 1, through attainment of the nearshore sub-quota or October 31, whichever is earlier. The Council has further recommended that, in times when the all-depth halibut fishery is closed and halibut fishing is permitted only inshore of the 40 fm depth contour, halibut possession and retention by vessels operating offshore of 40 fm would be prohibited. This recommendation is essentially a "housekeeping" measure intended to improve enforcement of closed areas and to better discourage vessels from violating closed areas.

An economic analysis of the expected effects of each selected alternative relative to the No Action Alternative

According to NMFS Guidelines for Economic Analysis of Fishery Management Actions (August 16, 2000), the economic analysis of proposed fishery management actions should discuss the types and direction of expected effects on the living marine resources, their habitats, and those who benefit from these resources. The types of effects to consider include the following: changes in net benefits within a benefit-cost framework; changes in benefits and costs of groups of individuals, businesses of differing sizes, and other entities (including small communities and governmental entities); changes in income and employment in fishing communities; cumulative impacts of regulations; and changes in other social concerns.

The economic analysis below is a brief and qualitative analysis as specific economic studies of the West Coast recreational halibut fishery are not available. However, one report was found that gives a snapshot of the Oregon directed recreational halibut fishery and consequently a perspective on the West Coast recreational fishery as the Washington fishery is similar to that of Oregon's. The report, "Oregon's Groundfish Fishery Trends, Implications, and Transitioning Plans," published by the Oregon Coastal Zone Management Association (June 2000) gives the following projection for the year 2000:

"Oregon's recreational marine fisheries have two major segments: (1) when salmon is the targeted species, and (2) when all other non-salmon species are the primary purpose for making the fishing trip. The non-salmon recreational fishery can be further defined by where fishing occurs: ocean or lower estuaries. The ocean non-salmon fishery is often times referred to as the bottomfish fishery. These non-salmon fisheries contribute substantially to coastal economies...The total economic contribution for the recreational marine fisheries were estimated to be \$27.4 million (1999 dollars), of which \$12.0 million is when trips are for non-salmon ocean and estuary species. Ocean bottomfishing angler trips were estimated to be 84.4 thousand in 2000. Of this amount, \$0.8 million will be generated when halibut is the target species for a bottomfish trip....."

For further perspective, the \$0.8 million projection of the economic contribution (total personal income) to the Oregon economy compares to the Oregon total sport quota (targeted and incidental harvest) of 163,097 pounds. For the past few years, the Oregon sport quota has been about 60% higher reaching a level 262,000 pounds in both 2002 and 2003.

As indicated previously, the Area 2A quota among commercial (treaty and non-treaty) and recreational fishermen is allocated according to a set formula. The proposed alternatives do not change the

commercial or recreational allocations. In addition to making it easier to manage the fishery, these proposed regulations are largely focused on improving the potential that the recreational allocation is achieved through changes in the subarea allocation processes. In recent years, the recreational allocation has tended to be underfished. For example, the 2003 recreational harvest (404,309 pounds) was 18 percent less than the recreational allocation (494,500 pounds).

These regulations will have direct effects on recreational fishermen and the state and federal fisheries managers and indirect effects on fishing communities. Given that the proposed changes to the Plan are minor and typically on the order of housekeeping rules and formalizing season setting activities that are already taking place, the resulting changes in the benefits and costs associated with this fishery are also likely to be minor.

Flexible inseason management provisions for Washington State sport fisheries. The purpose of providing quota transfer language specific to the subareas, rather than simply relying on quota transfer language in the “flexible inseason management provision” paragraphs is to allow the transfer to be made effective upon announcement by NMFS on its halibut hotline, rather than upon announcement in the *Federal Register*. This recommended revision does not affect the process of evaluating quota attainment, and is intended solely to make the inseason halibut fishery management process more efficient. Halibut fishers rely on the halibut hotline and on state bulletins for their information about the halibut fishery, not on the more formal *Federal Register*.

Unused quota from Washington North Coast, Washington South Coast and Columbia River subareas can now be more expeditiously transferred among these subareas. This may increase overall harvest opportunity for Washington fishermen and their communities with no perceptible affect on fisheries management costs as this transfer would be done via conference call between federal, state and IPHC managers.

Public Announcement Process for the Puget Sound Subarea. This alternative reduces the costs of management as it reduces the need for unnecessary workshops. Management of the fishery in this subarea is scheduled to remain relatively unchanged over the next few years. Consequently, there is no need for the annually required public workshop on scheduling the Puget Sound sport fishing season date. Rather than the Plan making an annual workshop mandatory, workshops could be held only as needed. Communication by mail and email with Puget Sound anglers would continue as a means to disseminate information and to obtain public comment. Public opportunity to comment on the halibut fisheries in the state-run public comment process would not be compromised by this recommendation, nor would this recommendation alter in any way public opportunity for comment on halibut fishery management in the Federal notice-and-comment process. Therefore, the potential costs savings associated with this alternative are the costs of not having one public workshop a year.

Washington North Coast and South Coast Subarea Season Dates. Both of these season date changes are minor revisions to the status quo. For Washington’s North Coast fishery, the alternative delays the start date for the May fishery to assure that recreational fishing can occur over the Memorial Day weekend. This shift is likely to allow a greater number of anglers to participate in the halibut fishery as the May fishery will be better timed to meet seasonal demand as well as more favorable weather conditions. This alternative may have a negative impact on some Washington North Coast fishing communities if they are more dependent on an early May fishery. For Washington’s South Coast fishery, the automatic shift to a 7 day per week fishery on July 1st would allow more fishing opportunity for halibut when the salmon season is open. By making this shift in the fishery automatic, this alternative would also reduce management costs compared to recent years where NMFS implemented this change through an inseason

action published in the *Federal Register*.

Combining the Oregon North Central and South Central Coast Subareas. This revision mimics the way this fishery has been managed in recent years. Consequently, this revision does not affect the amount of halibut taken by anglers in these fisheries, nor does it affect the halibut allocations in other sport fishery subareas relative to the existing management practices.

Oregon Spring and Summer "Additional Fishing Days". This revision would aid fishery participants in planning their halibut fishing trips, but would not alter the quotas available to this combined subarea. This alternative changes the process for scheduling the number of "additional fishing days" needed to achieve the combined North Central and South Central spring quota so that such days are put on a schedule of every other week (Friday and Saturday). If there is unused quota, the every other week schedule will be put in place automatically and used until the quota is reached. Under the existing system, the number of additional fishing days is forecasted through inseason decisions and, despite these forecasts, the quota was underfished. Similarly, the combined North Central and South Central summer season, which begins on the first Friday in August, will be open every other week (Friday and Saturday). These alternatives increase the potential that the allocation will be completely fished, and reduces the forecasting burden and inseason efforts by fisheries managers.

Extension of the South of Humbug Mountain Subarea Season End Date. This revision is intended to match the season end date for this subarea with the season end dates for the other Oregon subareas. This alternative extends the halibut season in this subarea by one month to October 31. Unlike the other subareas in Area 2A, this subarea does not have a catch accounting system for ports in northern California that may have halibut landings. Based on low landings reported into Brookings, OR, it is believed that historically, halibut fishery participation and halibut availability are low in this subarea. Therefore, while quota is allocated to this subarea every year, it is uncertain whether that quota is ever attained. However, since this subarea is at the southern extent of the range of Pacific halibut, it is assumed that landings in this subarea are not high enough to warrant implementing a catch accounting system in northern California.

Consistency with Federal Rockfish Conservation Area Regulations. These recommended revisions to the Plan and implementing halibut recommendations continue the initiative started in 2003 intended to better mesh halibut regulations with groundfish regulations, focusing on the sport halibut fishery off Oregon. This alternative expands the area where participants in the Oregon Central Coast nearshore fishery can fish by moving the current area, out to the 30fm depth contour, out to the 40 fm depth contour. This adjustment will better mesh halibut regulations with Federal groundfish regulations, making enforcement of the Federal closed area (also known as a Rockfish Conservation Area) easier and reducing angler confusion.

Area Closed to Non-Treaty Commercial Halibut Fishing. For the non-treaty commercial halibut fishery, only a qualitative economic analysis is provided because the change is minor. This recommended revision to the annual domestic Area 2A halibut management measures reduces the area closed to non-treaty commercial halibut fishing by 3 fm by moving the eastern boundary of the closed area from 27 fm out to 30 fm. This revised boundary is designed to better protect overfished rockfish species, such as yelloweye and canary rockfish, that may be caught with longline gear used in the commercial halibut fishery. This adjustment will align halibut regulations with Federal groundfish regulations, making enforcement of the Federal closed area (also known as a Rockfish Conservation Area) easier.

Conclusion

The proposed changes to the Plan and annual domestic Area 2A halibut management measures are not a significant action according to EO 12866. The proposed changes to the Plan and annual domestic Area 2A halibut management measures are insignificant and are expected to result in either no impact at all, or a modest increase in fishing opportunity for sport halibut fishermen and operators. This action will not have a cumulative effect on the economy of \$100 million or more nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant adverse impacts are anticipated on competition, employment, investments, productivity, innovation, or competitiveness of U.S.-based enterprises. The gross revenues generated from halibut fisheries coastwide are not expected to differ substantially as a result of the proposed changes to the Plan.

INITIAL REGULATORY FLEXIBILITY ANALYSIS

The RFA, 5 U.S.C. 603 *et seq.*, requires government agencies to assess the effects that various regulatory alternatives would have on small entities, including small businesses, and to determine ways to minimize those effects. A fish-harvesting business is considered a "small" business by the Small Business Administration (SBA) if it has annual receipts not in excess of \$3.5 million. For related fish-processing businesses, a small business is one that employs 500 or fewer persons. For marinas and charter/party boats, a small business is one with annual receipts not in excess of \$6.0 million. All of the businesses that would be affected by this action are considered small businesses under SBA guidance.

When an agency proposes regulations, the RFA requires the agency to prepare and make available for public comment an IRFA that describes the impact on small businesses, non-profit enterprises, local governments, and other small entities. The IRFA is to aid the agency in considering all reasonable regulatory alternatives that would minimize the economic impact on affected small entities. Under the RFA, an agency does not need to conduct an IRFA and/or Final Regulatory Flexibility Analysis (FRFA), if a certification can be made that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. To certify, the agency must: state the basis and purpose of the rule, describe and estimate the number of small entities to which the rule applies, estimate economic impacts on small entities, by entity size and industry, and explain the criteria used to evaluate whether the rule would impose "significant economic impacts."

Why the action is being considered, objectives and the legal basis for the action

The basis and purpose of the proposed rule is to revise the Plan and annual domestic halibut management measures in Area 2A for 2004. As mentioned in the RIR, the Northern Pacific Halibut Act of 1982 at 16 U.S.C. 773c provides that the Secretary shall have general responsibility to carry out the Halibut Convention between the United States and Canada and that the Secretary shall adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. This legal responsibility and its implementation for West Coast halibut fisheries is further described in the RIR under "Description of Management Objectives and Legal Authority."

Each year, the states of Washington and Oregon and the halibut treaty tribes meet with their fishery participants to review halibut management under the Plan. Based on feedback from these meetings and experience from the previous year's fishing season, the states or the tribes may propose changes to the Plan. Proposed changes to the plan are intended to remedy any problems encountered during the previous year's management, problems with other fisheries with overlapping management jurisdiction (i.e., Pacific Coast groundfish), or other anticipated problems.

If either the states or the tribes wish to propose changes to the Plan or annual domestic Area 2A halibut management measures, their representatives bring those proposed changes to the Council at its September meeting and the Council makes final recommendations to NMFS on revisions to the Plan and domestic management measures at its November meeting. This year, both Washington and Oregon brought constituent proposals forward to the Council.

For 2004, the Council has recommended a change to annual domestic Area 2A halibut management measures that would revise the eastern, inshore boundary of an area closed to non-treaty commercial halibut fishing.

For 2004, the Council has recommended a series of minor changes to the Plan, as initially proposed by the states of Washington and Oregon, including:

- Language in the Plan's section on Sport Fisheries (Section (f)), related to the sport fisheries off the coast of Washington is amended to: revise the process by which the public is notified of inseason shifts of halibut quota between Washington sport subareas; revise the process by which the public is notified of Puget Sound subarea fishing dates, and; make minor revisions to season start dates in the Washington North Coast and South Coast subareas. These proposals are intended to improve inseason management flexibility for managers and anglers, and are intended to provide holiday fishing opportunities for North Coast anglers.
- Language in the Plan's section on Sport Fisheries (Section (f)), related to the sport fisheries off the coast of Oregon is amended to: combine the North Central and South Central Coast subareas, which are already managed in concert; revise the process by which "additional fishing days" are set for the Spring and Summer fisheries once the initial fixed fishing days have occurred in the Spring fishery and if the quota has not been achieved; extend the season duration south of Humbug Mountain to October 31; clarify Federal halibut season regulations so that they provide better protection for overfished groundfish species by stating that halibut possession is prohibited in waters closed to halibut fishing for the protection of groundfish, make halibut nearshore fishing area regulations consistent with Council recommendations for groundfish nearshore fishing area regulations. These proposals are intended to provide anglers with an improved opportunity to access their available quota and to provide consistency between Federal groundfish and halibut regulations.

Description and estimate of the number of small entities to which the rule applies.

Under the RFA, the term "small entities" includes small businesses, small organizations, and small governmental jurisdictions.

Small businesses. The SBA has established size criteria for all major industry sectors in the US including fish harvesting and fish processing businesses. A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts not in excess of \$3.5 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products is a small business if it meets the \$3.5 million criterion for fish harvesting operations. A wholesale business servicing the fishing industry is a small businesses if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. For

marinas and charter/party boats, a small business is one with annual receipts not in excess of \$6.0 million.

Small organizations. The RFA defines “small organizations” as any nonprofit enterprise that is independently owned and operated and is not dominant in its field.

Small governmental jurisdictions. The RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000.

In determining the potential universe of entities subject to this rule, we must consider those entities to which this rule applies. Although many small and large nonprofit enterprises track fisheries management issues on the West Coast, the proposed changes to the Plan and annual management measures will not directly affect those enterprises. Similarly, although many fishing communities are small governmental jurisdictions, no direct regulations for those governmental jurisdictions will result from this proposed rule. However, charterboat operations and participants in the non-treaty directed commercial fishery off the coast of Washington and Oregon are small businesses that are directly regulated by this rule.

Approximately 700 vessels were issued IPHC licenses to retain halibut in 2003. IPHC issues licenses for: the directed commercial fishery in Area 2A, including licenses issued to retain halibut caught incidentally in the primary sablefish fishery (260 licenses in 2003); incidental halibut caught in the salmon troll fishery (323 licenses in 2003); and the charterboat fleet (127 licenses in 2003). No vessel may participate in more than one of these three fisheries per year. Individual recreational anglers and private boats are the only sectors which are not required to have an IPHC license to retain halibut.

Specific data on the economics of halibut charter operations is unavailable. However, the Pacific States Marine Fisheries Commission (Commission) is completing a report on the overall West Coast charterboat fleet. In surveying charterboat vessels concerning their operations in 2000, the Commission estimated that there were about 315 charterboat vessels in operation off Washington and Oregon. Compared with the 127 IPHC licenses in 2003, this estimate suggests that approximately 40 percent of the charterboat fleet participates in the halibut fishery. The Commission has developed preliminary estimates of the annual revenues earned by this fleet and they vary by size class of the vessels and home state. Small charterboat vessels range from 15 to 30 feet and typically carry 5 to 6 passengers. Medium charterboat vessels range from 31 to 49 feet in length and typically carry 19 to 20 passengers. (Neither state has large vessels of greater than 49 feet in their fleet.) Average annual revenues from all types of recreational fishing, whalewatching and other activities ranged from \$7,000 for small Oregon vessels to \$131,000 for medium Washington vessels. These data confirm that charterboat vessels qualify as small entities under the Regulatory Flexibility Act.

Reporting and recordkeeping requirements.

There are no projected reporting or recordkeeping requirements associated with this action.

Relevant Federal rules that may duplicate, overlap or conflict with the proposed action.

There are no relevant Federal rules that may duplicate, overlap, or conflict with this action. One of the regulatory revisions discussed above, “Consistency with Federal Rockfish Conservation Area Regulations,” is specifically intended to prevent conflicting groundfish and halibut regulations for the recreational fisheries off Oregon.

A description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities

The objectives of this action are:

For Washington sport fisheries– These proposals are intended to improve inseason management flexibility for managers and anglers, and are intended to provide holiday fishing opportunities for North Coast anglers.

For Oregon sport fisheries– These proposals are intended to provide anglers with an improved opportunity to access their available quota and to provide consistency between Federal groundfish and halibut regulations.

For Washington and Oregon non-treaty commercial fisheries– These proposals are intended better protect overfished rockfish species, such as yelloweye and canary rockfish, that may be caught with longline gear used in the non-treaty commercial halibut fishery.

For each of the revisions proposed for 2004, the Council recommended a Plan or regulatory revision intended to either improve flexibility for anglers or ensure consistency between Federal groundfish and halibut regulations. As discussed below, NMFS does not expect any significant economic impacts for small entities from this proposed rule. There were no alternatives that could have similarly improved angler enjoyment of and participation in the fisheries while simultaneously protecting halibut and co-occurring groundfish species from overharvest.

Estimate of economic impacts on small entities, by entity size and industry.

The proposed changes to the Plan and annual domestic Area 2A halibut management measures, detailed above in the RIR, are not expected to have a significant economic impact on a substantial number of small entities. The changes to the Plan and domestic management measures are minor, non-substantive changes and do not affect the process of evaluating quota-attainment. The proposed changes to the Plan and domestic management measures increase flexibility in management and opportunity to harvest available quota. There are no large entities involved in the halibut fisheries, therefore, none of these changes to the Plan and domestic management measures will have a disproportionate negative affect on small entities versus large entities. None of these changes to the Plan and domestic management measures will significantly reduce profitability for small entities. In fact, increasing opportunity to harvest available quota and increasing the area available to fishing may increase profitability for some small entities along the Oregon Coast.

Conclusion

These changes are authorized under the Pacific Halibut Act, implementing regulations at 50 CFR 300.60 - .65, and the Pacific Council process of annually evaluating the utility and effectiveness of Area 2A Pacific halibut management under the Plan. The proposed changes to the Plan and annual domestic Area 2A halibut management measures are expected to result in either no impact at all, or a modest increase in fishing opportunity for commercial and sport halibut fishermen and operators. The proposed sport management measures for 2004 implement the Plan by managing the recreational fishery to meet the differing fishery needs of the various areas along the coast according to the Plan's objectives. The proposed commercial management measures for 2004 will allow the fishery access to a portion of the Area 2A TAC while protecting overfished rockfish species that co-occur with halibut. The measures for 2004 will be very similar to last year's management measures. These changes do not include any reporting or recordkeeping requirements. These changes will also not duplicate, overlap or conflict with other laws or regulations. Consequently, these changes to the Plan and annual domestic Area 2A halibut

management measures are not expected to meet any of the RFA tests of having a "significant" economic impact on a "substantial number" of small entities.

Attachment: Section 3.3, Human Environment, with halibut catch statistics for 2004